

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

LARRY HENDRIX,

Defendant.

ORDER

06-cr-54-bbc

10-cv-144-bbc

Defendant Larry Hendrix has filed a motion for post conviction relief under 28 U.S.C. § 2255, seeking a reduction in the sentence imposed on him on December 6, 2006, and a motion for appointment of counsel to assist him with his motion. Defendant contends that under recent Supreme Court cases, his sentence must be modified because the court erred in finding him an armed career criminal under 18 U.S.C. § 924(e).

This is defendant's third motion for post conviction relief. (He also filed a motion for relief under Fed. R. Civ. P. 60, which was denied by this court as untimely. Defendant appealed and the court of appeals remanded the case for dismissal for lack of jurisdiction.) Defendant should know by now that this court has no authority to entertain any post conviction motion from him unless he obtains certification from a panel of the Court of

Appeals for the Seventh Circuit, 28 U.S.C. § 2255 ¶8.

Defendant has not shown that he obtained certification for filing this motion. Therefore, it must be dismissed.

I note that even if I had authority to hear the motion, I would dismiss it for lack of merit. Defendant says that it was error to sentence him as an armed career criminal without finding that his two prior burglary convictions were crimes of violence under the “otherwise involves” clause of the definition of armed career criminal guidelines. He is wrong. The “otherwise involves” clause played no role in the determination of defendant’s status as an armed career criminal because § 924(e) lists “burglary” as an explicit predicate for the finding.

ORDER

IT IS ORDERED that defendant Larry Hendrix’s motion for vacation of his sentence pursuant to 28 U.S.C. § 2255 is DISMISSED because this court lacks the authority to

entertain it. Defendant's motion for appointment of counsel is DENIED as moot.

Entered this 23d day of March, 2010.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge